

AN ORDINANCE 101769

**AUTHORIZING THE EXECUTION OF A MEDIATED SETTLEMENT AGREEMENT IN THE AMOUNT OF \$300,000.00 IN CITY OF SAN ANTONIO V. THE BERTETTI FAMILY LIMITED PARTNERSHIP, ET AL, CONDEMNATION CAUSE NO. 2000-ED-0018, IN CONNECTION WITH THE BABCOCK ROAD/LEON CREEK IMPROVEMENTS - HAUSMAN TO DEZAVALA PROJECT, AN AUTHORIZED 1994 GENERAL OBLIGATION STREET IMPROVEMENT PROJECT, LOCATED IN DISTRICT 8.**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

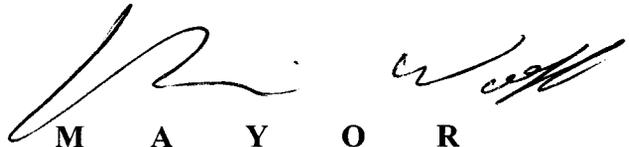
**SECTION 1.** The Mediated Settlement Agreement in Cause No. 2000-ED-0018, *City of San Antonio v. The Bertetti Family Limited Partnership, et al*, for the total sum of \$300,000.00 is hereby approved and authorized to be executed by the City Manager or her designee. A copy of the agreement as approved is attached hereto as **Attachment I**. The City's attorneys are hereby authorized to execute any and all further documents necessary to conclude this cause.

**SECTION 2.** The amount of \$335,460.20 is authorized to be deposited in Fund 45099000, Project Definition 23-00693, Babcock Road/Leon Creek Improvements - Hausman to De Zevala, general ledger account 6301130.

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, the Interim City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This ordinance shall be effective on the 11th day of December, 2005.

**PASSED AND APPROVED this 1st day of December 2005.**

  
M A Y O R  
For PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

CITY OF SAN ANTONIO

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IN THE PROBATE COURT

VS.

NUMBER TWO

THE BERTETTI FAMILY LIMITED  
PARTNERSHIP, ET AL

BEXAR COUNTY, TEXAS

**MEDIATED SETTLEMENT AGREEMENT**

The parties hereto agree that this lawsuit and all related claims and controversies between them are hereby settled in accordance with the following terms:

1. The parties acknowledge that bona fide disputes and controversies exist between them, and they desire to compromise and settle all claims and causes of action of any kind whatsoever which the parties may have arising out of the transaction or occurrence which is the subject of this litigation. It is further understood and agreed that this is a compromise of a disputed claim, and nothing contained herein shall be construed as an admission of liability.
2. Each signatory warrants and represents that:
  - a. such person has authority to bind the party or parties for whom such person acts.
  - b. the claims, suits, rights, and/or interests which are the subject matter hereto are owned by the party asserting same, have not been assigned, transferred or sold, and are free of any encumbrance.
3. The parties will execute and file an Agreed Order dismissing all claims in the above styled and numbered case with prejudice. The Plaintiff will bear the court costs and each party will bear its own costs of litigation expenses.

4. City agrees to pay Depr.  
 the sum of \$ 300,000.00 on or before Sixty  
(60) days.

5. The parties further agree as follows:

The City's agreement herein is subject  
to City Council authority.

**Attachment I**

To Ordinance No. \_\_\_\_\_  
Approved on December 1, 2005

To the extent allowed by law &

— Except for the agreements set forth herein, the parties hereby release, discharge, and forever hold the other harmless from any and all claims, counterclaims, demands, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted in the above case, as of this date, arising from or related to the events and transactions which are the subject matter of this cause. This mutual release runs to the benefit of all attorneys, agents, employees, officers, directors, shareholders, partners, heirs, assigns, and legal representatives of the parties hereto.

~~— Counsel for \_\_\_\_\_ shall deliver drafts of any further documents to be executed in connection with this settlement to counsel for the other parties hereto within \_\_\_\_\_ days from the date hereof. The parties and their counsel agree to cooperate with each other in the drafting and execution of such additional documents as are reasonably requested or required to implement the provisions and spirit of this Settlement Agreement, but notwithstanding such additional documents the parties confirm that this is a written settlement agreement as contemplated by Section 154.071 of the Texas Civil Practice and Remedies Code.~~

— This Settlement Agreement is made and performable in Bexar County, Texas, and shall be construed in accordance with the laws of the State of Texas.

— If one or more disputes arise with regard to the interpretation and/or performance of this Agreement or any of its provisions, including the form of further documents to be executed, the parties agree to further mediation in an attempt to resolve same with Judge Bob Shannon, the Mediator, who facilitated this settlement.

— Although the mediator has provided a basic outline of this Settlement Agreement to the parties' counsel as a courtesy to facilitate the final resolution of this dispute, the parties and their counsel have thoroughly reviewed such outline and have, where necessary, modified it to conform to the requirements of their agreement. All signatories to this Settlement Agreement hereby release the Mediator from any and all responsibility arising from the drafting of this Settlement Agreement, and by signing this Settlement Agreement acknowledge that they, or their attorneys, have been advised by the mediator in writing that this Settlement Agreement should be independently reviewed by counsel before executing the Agreement.

— The parties represent and warrant that: (i) they have carefully reviewed this Settlement Agreement, (ii) they have consulted with their attorneys concerning this Settlement Agreement, (iii) any questions that they have pertaining to this Settlement Agreement have been answered and fully explained by their attorneys; (iv) their decision to execute this Settlement Agreement was not based on any statement or representation, either written or oral, made by any person or entity other than those statements contained in this Settlement Agreement, and specifically was not based on any statement or representation made by any opposing party or its counsel; (v) this Settlement Agreement constitutes the entire agreement and understanding between the parties; (vi) they have entered into this Settlement Agreement of their own free will; and (vii) all prior and contemporaneous agreements, understandings, representations and statements, whether written or oral, are merged herein.

Agreed, this 7<sup>th</sup> day of October, 2005.

**PLAINTIFF:**

CITY OF SAN ANTONIO

By:   
Name: Steven Hodges  
Title: Real Estate Manager

**DEFENDANTS:** Bertelli Family Limited Partnership

by Eugenia Y. Bertelli  
Eusebia V. Bertelli,  
General Partner

APPROVED AS TO FORM:

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By:   
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State Bar No. 20139000

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State Bar No. 15604000

ATTORNEY FOR DEFENDANTS